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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 421

**ARSENAL BUILDING CORPORATION AND SPEAR & Co.,
INC., PETITIONERS**

v.

MEYER GREENBERG

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT**

No. 462

**J. F. FITZGERALD CONSTRUCTION COMPANY,
PETITIONER**

v.

CHRIS PEDERSEN ET AL.

**ON WRIT OF CERTIORARI TO THE NEW YORK COURT OF
APPEALS**

**BRIEF ON BEHALF OF THE ADMINISTRATOR OF THE
WAGE AND HOUR DIVISION, UNITED STATES DEPART-
MENT OF LABOR, AS AMICUS CURIAE**

The Solicitor General submits this brief on be-
half of the Administrator of the Wage and Hour

Division, United States Department of Labor, as *amicus curiae*.

OPINIONS BELOW

No. 421

The opinion of the District Court for the Southern District of New York (R. 464-472), holding plaintiff entitled to judgment, is reported in 50 F. Supp. 700. The memorandum opinion of the District Court (R. 461), adding interest upon plaintiff's motion to amend the judgment, is not officially reported, but is printed in 7 Wage Hour Rept. 144 and in 8 Lab. Cases 62,071. The opinion of the Circuit Court of Appeals for the Second Circuit (R. 479-482), affirming the District Court, is not officially reported but is printed in 7 Wage Hour Rept. 788 and in 8 Lab. Cases 62,287.

No. 462

The opinion of the Supreme Court of New York, Rensselaer Special Term (R. 42-47), granting plaintiff's motion for summary judgment, and the order of the Supreme Court (R. 41), granting plaintiff statutory recovery with interest, are unreported. The per curiam opinion of the Appellate Division, Third Department, of the Supreme Court of New York (R. 51), affirming the Special Term, together with the dissenting opinion (R. 51-58), is reported at 266 App. Div. 1032. The opinion of the New York Court of Appeals (R. 63-65), affirming the Appellate Division, is reported at 293 N. Y. 126.

JURISDICTION

The judgment of the Second Circuit Court of Appeals in case No. 421 was entered on August 10, 1944 (R. 482). The petition for writ of certiorari was filed September 1, 1944, and was granted, on November 6, 1944, limited to question (h).

The judgment of the New York Court of Appeals in case No. 462 was entered on June 19, 1944 (R. 63). The petition for certiorari was filed on September 13, 1944, and was granted on November 6, 1944.

The jurisdiction of this Court in case No. 421 rests on Section 240 (a) and in case No. 462 on Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925 (U. S. Code, Title 28, Sections 347 (a) and 344 (b), respectively).

QUESTION PRESENTED

The question considered in this brief is whether interest may be added to the statutory recovery under Section 16 (b) of the Fair Labor Standards Act.

STATUTE INVOLVED

The pertinent provision of the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U. S. C., Sec. 201) is the following:

SEC. 16 (b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of

their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. the court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

In allowing interest, the courts below relied on Section 480 of the New York Civil Practice Act which provides:

Interest to be included in recovery. Where in any action, except as provided in section four hundred eighty-a, final judgment is rendered for a sum of money awarded by a verdict, report or decision, interest upon the total amount awarded, from the time when the verdict was rendered or the report or decision was made to the time of entering judgment, must be computed by the clerk, added to the total amount awarded, and included in the amount of the judgment. In every action wherein any sum of money

shall be awarded by verdict, report or decision upon a cause of action for the enforcement of or based upon breach of performance of a contract, express or implied, interest shall be recovered upon the principal sum whether theretofore liquidated or unliquidated and shall be added to and be a part of the total sum awarded.

STATEMENT

Both suits were instituted by employees under Section 16 (b) of the Fair Labor Standards Act to recover unpaid overtime compensation and liquidated damages, as provided by the Act. In granting recovery of both of the amounts sued for, the courts allowed averaged interest on those amounts from the mid-point in the period of underpayments, pursuant to Section 480 of the New York Civil Practice Act which provides for the recovery of interest in any "action for the enforcement of or based upon breach of performance of a contract, express or implied."¹

ARGUMENT

Both the New York Court of Appeals in the *Pedersen* case and the Circuit Court of Appeals in the *Arsenal* case upheld the inclusion of interest in a judgment rendered for statutory over-

¹ The legal rate of interest in New York is 6%. N. Y. Cons. Laws (Cahill, 1930) c. 21, § 370.

time and liquidated damages under Section 16 (b) of the Fair Labor Standards Act. The interest in both cases was computed from the date of the underpayment. Petitioner attacks these awards of interest on the ground that the propriety of including interest in a judgment rendered under Section 16 (b) raises "a federal question" to be determined by federal, not state law; that the federal policy expressed in the Fair Labor Standards Act precludes such an award of interest; and that therefore the application of the state law conflicts with the federal statutory policy. (Petition for certiorari in *Pedersen* case, pp. 17-19; petition for certiorari in *Arsenal* case, p. 38.) The Government agrees that the question whether interest should be awarded is a federal question to be determined by federal law. We submit, however, that, under the federal law, and under the policy expressed in the Fair Labor Standards Act, judgments for overtime compensation under Section 16 (b) of the Act should include an award of interest from the date of underpayment. We further submit that neither the provisions of the Act, nor its underlying policy, preclude the inclusion of an award of interest on the "equal amount" recoverable as "liquidated damages" in a suit for overtime compensation under Section 16 (b)..

THE ALLOWANCE OF INTEREST ON THE CLAIMS HERE INVOLVED IS A FEDERAL QUESTION, AND THE COURT MAY DETERMINE A SUITABLE RATE OF INTEREST TO BE ALLOWED ON SUCH CLAIMS

1. This Court has consistently recognized that "in the interpretation and application of federal statutes, federal not local law applies" (*Prudence Corp. v. Geist*, 316 U. S. 89, 95), and that where a claim is derived from a federal statute, "the state court was bound to proceed in such manner that all substantial rights of the parties under controlling federal law would apply." *Garrett v. Moore-McCormack Co.*, 317 U. S. 239, 245, 246. See also *McKenzie v. Irving Trust Co.*, No. 188, Oct. Term, 1944, decided Jan. 8, 1945, page 4 of slipsheet opinion; *Clearfield Trust Co. v. United States*, 318 U. S. 363; and cases cited in the Government's brief *amicus curiae* in Nos. 445 and 554, *Brooklyn Savings Bank v. William J. O'Neil and Dize v. Maddrix*, pp. 8-9. Since the claims asserted here are clearly derived from a federal statute—Section 16 (b) of the Fair Labor Standards Act, which permits suits to recover unpaid overtime compensation and an "additional equal amount as liquidated damages" in "any court of competent jurisdiction"—and since there is nothing in the Fair Labor Standard Act war-

ranting an interpretation of Section 16 (b) as adopting rules of state law (cf. *Davies Warehouse Co. v. Bowles*, 324 U. S. 144), the claims which the respondents sought to enforce in the courts below are clearly governed by federal law.

The Fair Labor Standards Act is silent on the awarding of interest on the obligation created by Section 16 (b). But since the obligation is itself created by a federal statute, the allowance of interest thereon is in "the absence of an applicable federal statute [a question] for the federal courts to determine, according to their own criteria * * *." *Royal Indemnity Co. v. United States*, 313 U. S. 289, 296; see also *Board of Commissioners v. United States*, 308 U. S. 343, 350, 352; Note (1930), 44 Harv. L. Rev. 105.

And while the "liability for interest is of relatively recent origin and the rationale of its recognition or denial is not always clear" (*Board of Commissioners v. United States*, 308 U. S. 343, 351); it is well settled that, under the federal law, "if there is no statute on the subject, interest will be allowed by way of damages for unreasonably withholding payment of an overdue account." *Young v. Godbe*, 15 Wall. 562, 565. See also *Royal Indemnity Co. v. United States*, *supra*; *Casey v. Galli*, 94 U. S. 673; *Garvy v. Wilder*, 121 F. (2d) 714 (C. C. A. 7).

Since it has been finally determined in these cases that respondents are entitled to liquidated

amounts which had been improperly withheld from them, interest in some amount should be awarded on those amounts unless it can be demonstrated that such an award would conflict with the federal or state policy. Cf. *Board of Commissioners v. United States*, 308 U. S. 343.

2. The courts below awarded interest on respondents' claims at the rate of 6%, computed from the date of underpayment. The 6% rate was adopted by these courts, as an appropriate one, from the New York Civil Practice Act. We submit that the rate allowed was proper.

In the *Royal Indemnity* case, *supra*, the majority of this Court was of the view that while a state law would not be regarded as "controlling" in determining the rate of interest to be awarded by a federal court in entering judgment on a claim which derived from a federal statute, "a suitable rate is that prevailing in the state where the obligation was given and to be performed" (313 U. S. at 297). Three Justices declined, however, to accept this view because "interest rates fixed by state legislatures are not uniform but vary in amount," and suggested the fixing of a uniform rate by the federal judiciary.

Examination of the state statutes fixing the rates of interest reveals that a 6% rate has been

adopted in thirty-nine states,³ a 5% rate in four states,⁴ a 7% rate in four states,⁵ and an 8% rate in but one state.⁶ A 6% rate of interest is also

³ Ala. General Acts (1935), No. 37, p. 69; Ariz. Code (Rev. Supp., 1936) § 1883; Ark. Digest Stat. (Pope, 1927) § 9391; Colo. Sess. Laws (1935) c. 139, § 1; Conn. Gen. Stat. (1930) § 4729; Del. Rev. Code (1935) § 3101; Idaho Code Ann. (Supp. 1940) § 26-1904; Ind. Ann. Stat. (Burns, 1933) § 19-2001; Kan. Gen. Stat. (Corrick, 1935) § 41-101; Ky. Rev. Stat. (Baldwin, 1942) § 360.010; Me. Rev. Stat. (1930) c. 57, § 142; Md. Ann. Code (Flack, 1939) art. 49, § 1; Mass. Gen. Laws (1932) c. 107, § 3, c. 235, § 8; Minn. Stat. (Mason, 1927) § 7036; Miss. Ann. Code (Harrison, 1942) § 36; Mo. Rev. Stat. (1939) § 3226; Mont. Rev. Code Ann. (Anderson and McFarland, 1935) § 7725; Neb. Comp. Stat. (Supp., 1941) § 45-102; N. H. Rev. Laws (1942) c. 367, § 1; N. J. Rev. Stat. (1937) § 31:1-1; N. M. Stat. Ann. (1941) § 53-603; N. Y. Cons. Laws (Cahill, 1930) c. 21, § 370; N. C. Code Ann. (Michie, 1939) § 2305; N. D. Comp. Laws Ann. (Supp. 1925) § 6072; Ohio Code Ann. (Throckmorton, 1940) § 8305; Okla. Stat. (1941) tit. 15, § 266; Ore. Comp. Laws Ann. (1940) § 66-101; Pa. Stat. (Purdon, 1936) tit. 41, § 3; R. I. Gen. Laws (1938) c. 485, § 1; S. C. Civil Code (1942) § 6736; S. D. Code (1939) § 38.0108; Tenn. Code Ann. (Williams, 1934) §§ 7301, 7302; Tex. Ann. Stat. (Vernon, 1926) arts. 5069, 5070; Utah Code Ann. (1943) tit. 44-0-1; Vt. Pub. Laws (1933) § 7130; Va. Code Ann. (1936) § 5551; Wash. Rev. Stat. Ann. (Remington, 1932) § 7299; W. Va. Code Ann. (Michie, 1943) § 4627; Wis. Stat. (1943) § 115.04.

⁴ Ill. Rev. Stat. (Smith-Hurd, 1941) c. 74, § 1; Iowa Code (1939) § 9404; La. Code of Practice (Dart, 1942) Art. 554; Mich. Comp. Laws (1929) § 9239.

⁵ Cal. Gen. Laws (Deering, 1944) Act 3757, § 1; Ga. Code (1933) § 57-101; Nev. Comp. Laws (Hillyer, 1929) § 4322; Wyo. Rev. Stat. Ann. (Courtright, 1931) § 58-102.

⁶ Fla. Stat. (1941) § 687.01.

prescribed in a number of federal statutes.' Congress has also provided that interest shall be allowed on the judgments of federal district courts at the rate permissible under the law of the state.*

These statutes, we submit, manifest a general consensus of both state and federal legislative opinion that 6% is the proper rate of interest on a liquidated sum improperly withheld, and that the federal policy in this respect is substantially the same as that of the states. Since the question as to the proper rate of interest is legislative in nature this Court might well be guided by these expressions of legislative opinion in determining the rate of interest as a matter of federal law. In any event, however, the result would be the same in the instant cases whether the Court approves a

⁷ 40 U. S. C. 258a; 370 (included in the amount of final award in federal land condemnation proceedings); 31 U. S. C. 227 (on money improperly set-off by the United States against judgments secured against it); 31 U. S. C. 505 (on moneys recoverable by the United States in suits by it against government officers who have improperly withheld government funds); 26 U. S. C. 3771 (a) (on overpayment of internal revenue taxes); 26 U. S. C. 3794 (on delinquent internal revenue taxes).

* See 28 U. S. C. 811 which provides that with respect to judgments secured in federal district courts, interest "shall be allowed * * * in all cases where, by the law of the State in which such court is held, interest may be levied under process of execution on judgments recovered in the courts of such State", and such interest "shall be calculated * * * at such rate as is allowed by law on judgments recovered in the courts of such State."

federal rate of 6% or holds that allowance of the state rate of 6% was not improper:

II

INTEREST ON THE STATUTORY LIABILITY UNDER SECTION 16 (B) WAS PROPERLY AWARDED BY THE COURTS BELOW

The courts below awarded the respondents interest under Section 16 (b) of the Act on (1) unpaid overtime compensation and (2) on an "additional equal amount as liquidated damages."

While we think it clear, that the award of interest under Section 16 (b) on unpaid minimum wages or unpaid overtime compensation finds support in the intendment of the Act and in the interpretation given to it by this Court, the award of interest on the additional equal amount recoverable as liquidated damages does not involve all of the same considerations. We shall, therefore, treat separately the propriety of the award of interest on these two items of statutory liability.

A. INTEREST ON "UNPAID MINIMUM WAGES" AND "UNPAID OVERTIME COMPENSATION" UNDER SECTION (B)

Petitioners contend that "the Fair Labor Standards Act * * *, properly construed, * * * precludes an award [of interest]" (*Pedersen* pet., p. 17; *Arsenal* pet., p. 38). Although petitioner in the *Arsenal* case concedes (*Br.*, pp. 12-13), as the authorities require (see p. 8, *supra*), that or-

dinarily interest would be allowable on a claim for unpaid wages, it is argued that the provision for liquidated damages "as the remedy for all injury, including the injury of delay," when considered in the light of the specific provision for costs and attorney's fees and the omission of any mention of interest in the statute, indicates Congressional intent that no interest should be awarded (*Pederson* pet., p. 17, *Arsenal* pet., p. 38).

The answers to this argument are: (1) the liquidated damages cannot include or take the place of ordinary interest since they cannot accomplish the recognized purposes of such interest and are intended as compensation only for the indefinite and *unmeasurable* expenses, resulting from failure to pay statutory wages when due, which are not compensated by ordinary interest; and (2) the accrual of interest, unlike costs and attorney's fees, is implicit in the recovery of any debt for a liquidated amount past due and owing, and consequently the failure to provide specifically for interest is not indicative of Congressional intent that none should accrue.

1. A simple answer to petitioners' claim that liquidated damages are, in part, a substitute for interest is that, being fixed in amount regardless of the length of the delay in the payment of wages,

* The "damage" for which ordinary interest accrues is simply the accepted measure of the difference between the present and future value of money. See *Chesapeake & Ohio Railway Co. v. Kelly*, 241 U. S. 485, 489. And see note 10 on page 15, *infra*.

the liquidated damages cannot possibly accomplish the recognized purposes of ordinary interest—to translate past amounts due into present money value and to induce prompt payment of debts. The absence of the time factor in the provision for liquidated damages is persuasive evidence that Congress did not intend liquidated damages to serve as a substitute for or to be exclusive of the accrual of usual interest. To hold that the Act precludes an award of interest is to impute to Congress an intent to impede the recovery of the statutory wages by removing the ordinary incentives which tend to induce prompt payment of money claims generally. If interest were not allowed to accrue on the statutory liability, "there would be no motive to pay promptly, and no equality between those who should pay then and those who should pay at the end of a protracted litigation." See *Casey v. Galli*, 94 U. S. 673, 677. There is nothing in the nature of the statutory liability under the Fair Labor Standards Act, nor is there any other reasonable ground, to warrant the assumption that Congress intended to eliminate this motive to pay promptly which ordinarily attaches to liquidated monetary claims.

In contrast to the purposes of the standardized allowance of interest, the purpose of the liquidated damages is to compensate employees for the unascertainable expenses and losses which are likely to result when a worker fails to receive his statutory wages on time. As recognized by this

Court in *Overnight Motor Co. v. Missel*, 316 U. S. 572, holding that the liquidated damages under the Fair Labor Standards Act "are compensation, not a penalty or punishment by the Government" (p. 583), they are compensation for the indefinite and *unmeasurable* expenses and losses which might be incurred by the employee as a result of his failure to receive the statutory wages when due (*ibid.*). This Court stated (*ibid.*):

The retention of a workman's pay may well result in damages too obscure and difficult of proof for estimate other than by liquidated damages.

"Damages too obscure and difficult of proof for estimate" are obviously the unmeasurable damages attendant upon the detention of statutory wages—damages peculiar to the wage earners whom this legislation was designed to protect. The difference between the present and future value of money,¹⁰ in compensation for which ordinary interest is usually allowed on any liquidated claim due and owing, is not obscure nor unmeasurable;

¹⁰ See Slichter, *Modern Economic Society* (1931 ed), p. 679: "When a man borrows \$1,000 for one year at 6 per cent, at the end of the year he pays the lender \$1,060. This may seem improvident, because the borrower is giving \$1,060 for \$1,000. The reason why it is not necessarily improvident is because the borrower receives the \$1,000 *now* and pays the \$1,060 *a year hence*. In other words, interest represents the premium which men are willing to pay for present purchasing power." See also Knight, *Interest* in 8 *Encyclopedia of Social Sciences* (1931 ed) pp. 134-135; Clay, *Economics for the General Reader* (1926 ed.) pp. 323-324.

on the contrary it is a standardized and easily ascertainable amount. The purpose of Section 16 (b) was not to substitute liquidated damages for such ordinary and standardized allowances but to make the employee whole for the indefinite, unstandardized and unascertainable damages likely to result from delays in the payment of the statutory wages. For example, the employee whose wages are detained may be unable to have an illness treated and thereby subsequently incur great expense and loss of time at work or conceivably even sustain a grave injury to his health; or he may be unable to meet an insurance payment and be forced to allow his policy to lapse; or he may be driven to pledge more than ordinary prices for necessities in order to secure them on credit. Needless to say, these and other possible effects of the employee's failure to receive his statutory wage when due are hardly possible to predict; and it is for these indefinite damages, which cannot be estimated, that Congress deemed it necessary to provide fixed compensation in the form of liquidated damages.¹¹

¹¹ See *Cox v. Lykes Bros.*, 237 N. Y. 376, 379, 143 N. E. 226, where Chief Judge Cardozo stated with respect to a substantially identical provision, giving seamen whose wages are wrongfully withheld a sum equal to two days' pay for each and every day for which payment shall be delayed: "How much this extra amount should be would be often a troublesome question if it were left open in every case. "Hence it might be deemed advisable to have this *indefinite element* made definite by a general law with reference to

2. Nor is the fact that attorney's fee and costs are expressly mentioned in Section 16 (b), while interest is not, indicative of Congressional intent that no interest should accrue. The dissimilarity between interest on the one hand, and attorney's fee and costs on the other, is obvious; as noted in the preceding discussion, interest is implicit in the translation of a liquidated amount due in the past into present terms and would customarily accrue as a matter of law without special legislative provision. Attorney's fees and costs, however, are expenses of the litigation, which would ordinarily not be recoverable, and the payment of which was clearly designed to encourage the enforcement of their rights by employees who might otherwise be reluctant to institute proceedings. As pointed out by Representative Keller on the floor of the House (Cong. Rec.; Vol. 83, Part 8, p. 9264):

Among the provisions for the enforcement of the act an old principle has been adopted and will be applied to new uses. If there shall occur violations of either the wages or hours, the employees can themselves, or by designated agent or representatives, maintain an action in any court to recover the wages due them and in such a case the court shall allow liquidated damages in ad-

which the parties may conclusively be presumed to have contracted, and which, therefore, should be taken to be the law of the contract. (Emphasis supplied.)

dition to the wages due equal to such deficient payment and shall also allow a reasonable attorney's fees and assess the court costs against the violator of the law so that employees will not suffer the burden of an expensive lawsuit. [Emphasis supplied.]

In accordance with these principles, interest has been allowed under a substantially similar provision in Section 16 (2) of the Interstate Commerce Act which specifically provides for costs and attorney's fees but not for interest. *City of Danville v. Chesapeake & Ohio Ry. Co.*, 34 F. Supp. 620 (W. D. Va.). The cases cited by petitioners in which interest has been disallowed under the Federal Employers Liability Act or the Jones Act (*Arsenal Br.*, pp. 16-17) are not in point, since the damages under those statutes were unliquidated and therefore outside the general rule allowing interest on liquidated claims. See *Casey v. Galli*, *supra*, p. 677.¹²

¹² "Generally, interest is not allowed upon unliquidated damages." *Miller v. Robertson*, 266 U. S. 243, 258; see also *Mouery v. Whitney*, 14 Wall. 620, 653. This rule is well illustrated in the case of *Duplate Corp. v. Triplex Co.*, 298 U. S. 448, relied on by petitioner (*Arsenal Br.*, p. 15), where this Court stated (at p. 459):

we think that interest should run from the date when the damages are liquidated, and not * * * from the date of the last [patent] infringement.

In *Blair v. Sioux City & P. Ry.*, 73 N. W. 1053 (Iowa, 1898), also relied on by petitioner (*Arsenal Br.*, p. 15), the court based its decision, disallowing interest on treble damages resulting from unlawful rate discriminations by common

Clearly, therefore, the courts below did not err in awarding respondents interest on the statutory recovery for unpaid overtime compensation.¹³

carriers, on the ground that the "statute is penal in character" (at p. 1058).

Petitioners rely also on the cases of *Berry v. 34 Irving Place Corp.*, 52 F. Supp. 875 (S. D. N. Y.) and *Campbell v. Zavelo*, 243 Ala. 361, 366, 10 S. (2d) 29, refusing to allow interest on the statutory liability under the Fair Labor Standards Act (*Pedersen* pet., p. 19). The *Berry* case, which was decided before the decision of the Second Circuit in the *Arsenal* case, was apparently based on the assumption that interest is included in the liquidated damages provided by the statute—an assumption which, as we have shown *supra*, is unsound. The rationale of the Alabama Supreme Court in the *Zavelo* case is not entirely clear: its decision appears to be based on the fact that "the provisions of the Act of Congress are the limits of liability which can be imposed on an employer" and also on the fact that interest on this type of liability was apparently not allowable under the state law. See also *Wilks v. Phillips & Buttorff Mfg. Co.*, 7 Wage Hour Rept. 972 (C. A. Tenn., 1944) refusing to allow interest on the basis of the state law. But see, in addition to the cases at bar, the following cases allowing interest on statutory liability under the Fair Labor Standards Act: *Rigopoulos v. Kervan*, 140 F. (2d) 506 (C. C. A. 2); *Campbell v. Mandel Auto Parts Corp.*, 6 Wage Hour Rept. 435 (Sup. Ct. N. Y., 1943).

¹³ Petitioners in the *Arsenal* case assert that the Administrator "has never considered interest on wages withheld or on the additional equal amount of liquidated damages as a part of the employees' right of recovery for violations" (Br., p. 10). In support of this assertion, petitioners cite a number of statements by the Administrator that employers violating the Act are liable for double the unpaid sum, plus court costs and reasonable attorneys' fees, and the fact that, in collecting back wages, the Administrator has not required the payment of interest. The statements are virtually verbatim quotations of the language of Section 16 (b) without any

B. INTEREST ON "LIQUIDATED DAMAGES" UNDER
SECTION 16 (b)

For the reasons indicated (*supra* point II-A), the payment of interest on unpaid minimum wages and overtime compensation is not only in accord with the general rule that interest accrues on liquidated amounts due and owing, but also seems necessary to effectuate the primary objective of the Fair Labor Standards Act—the full and prompt payment of the minimum wage and overtime compensation required by Sections 6 and 7. Although an award of interest on the liquidated damages provided by Section 16 (b) also would tend to secure greater promptness in payment, it is not as essential to the achievement of the basic policy of the Act, since the liquidated damages plus interest on the primary amount would appear fully to reimburse the employee for the delay in payment of the primary amount due.

consideration of the special question of interest. Although the Administrator does collect the unpaid back wages required by Sections 6 and 7 of the Act, where possible, his primary concern in collecting such restitution has been to effectuate the basic objective of the Act, the payment of the amounts due under Sections 6 and 7, and to offset the competitive advantage which the violating employer may have derived from past underpayments. He has not purported, and has no responsibility, to collect the full amount of the liability imposed upon the employer by Section 16 (b). Neither the statements referred to nor his practice of collecting the unpaid compensation without interest reflects any administrative policy with respect to the accrual of interest upon employees' claims.

Nevertheless it is questionable whether Congress intended the employer to be able to delay the payment of liquidated damages as long as he desired without added liability for interest until the amount was reduced to judgment.¹⁴ Since the liquidated damages constitute a sum certain, their nature is such as to bring them within the orthodox rule that interest accrues on liquidated claims. We think it reasonably clear that the Act does not forbid such payment.

Respectfully submitted,

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¹⁴It is true that interest would continue to run on the overtime compensation, whether or not it would also run on liquidated damages; but this circumstance could be taken care of by the employer's paying overtime compensation alone, and leaving the liquidated damages claim for later disposition.